The first witness to appear for the prosecution was one Somas, a convicted felon. He really could say very little about implicating defendant Indiviglio in any direct transaction involving heroin. On A16 appears this testimony:

"Q Were you present when heroin was given to Mr. Matteo or Mr. James McCormack by the defendant Mr. Indiviglio?

A No I wasn't."

Under prodding by the Assistant U.S. Attorney, we have this question and answer (A18):

"Q I ask you again, Mr. Somas, whether or not you were present when Mr. Indiviglio gave any drugs to either Mr. Matteo or Mr. McCormack?

A I believe he might have given some to Mr. Matteo. You see, the samples were usually left in a place where Mr. Matteo would pick them up and give them to Mr. McCormack and Mr. McCormack would try them.

Now, there might have been an occasion I was there when John handed them over. I'm not positive. It was a long time ago and my memory just is not that good."

Outside of this, we then have testimony that Mr. Somas had a conversation with Mr. Matteo where he stated that Indiviglio gets a connection for heroin in France (A22). This was the sum and substance of his testimony. He confirmed that there were no illegal drugs in Indiviglio's apartment (A27).

Fay Somas, his girlfriend and then his wife, testified that she saw different people delivering heroin (Matteo, Breene (A31)) but never Mr. John Indiviglio (A140):

"Q Was there any discussion of narcotics at that time?

A We didn't actually bring out the words heroin or drugs. They were discussing about the money that John had made.

Q What was said?

A John said he made millions.

Q Who had asked him?

A Tyler did.

Q Do you remember the words that Tyler used?

A I believe he just asked, approximately how much did he make during the years, and John replied, millions.

Q Was there any other discussion after that?

A They discussed a foreign car that John was importing into the United States.

Q What was said about that car, that foreign car?

A Tyler asked if he still had any left and John said yes, he had one."

Then was this question and answer (A41):

"Q Did Mr. Indiviglio say why he was importing cars into the United States?

A No, he didn't come right out and say why.

Q He didn't?

A No.

Q Did you tell me in my office on Sunday

MR. KRIEGER: Objected to your Honor.

THE COURT: The jury may be excused. (At 2:14 p.m., the jury withdrew from the courtroom and the following occurred out of hearing . . ."

This was the total amount of testimony with regard to FAY SOMAS. Aguiar had no direct relations with defendant Indiviglio. On A54 appeared this testimony:

"Q During the spring and summer of 1968, did you have any contact with a man named James McCormick?

A Yes.

Q How did you meet him?

A I met him through my brother-in-law but I had known him for a while before that anyway, you know, through the neighborhood.

Q What was Mr. McCormick doing for a living at that time, do you know?

A He was in the heroin business.

Q Did he tell you that?

A I cut some material in his apartment for him. It was his material.

Q What do you mean by material?

A Heroin. I cut it down.

Q Did he tell you where he got that heroin from?

A Yes.

Q What did he say?

A From Indiviglio, Charles Indiviglio.

Q What color was that?"

Then once again we have hearsay that McCormack told him that Indiviglio was supplying the heroin (A55). In more than 100 pages of testimony, this is the only reference to John Indiviglio.

Breene testified that he had absolutely no transactions with Indiviglio (A96):

"Q Now did you ever engage in any business or any partnership or any agreement or arrangement with either Mr.

Somas, Mrs. Somas, Mr. Aguiar, Mr. Indiviglio, Mr. McCormack, that have been mentioned in these past few days for the sale, distribution, storing, buying, selling or having anything to do with narcotics?

A No, sir."

The indictment charges that between October, 1967 and September 27, 1972, defendant, JOHN INDIVIGLIO, did conspire with FRANK AGUIAR and JAMES McCORMACK to violate the Narcotics Law.

Obviously, it was, therefore, crucial for the prosecution as part of its case to prove an agreement existed between Aguiar, McCormack and Indiviglio. A reading of the testimony of Somas reveals that he never saw any narcotics transactions involving John Indiviglio. Fay Somas testified that she never saw Indiviglio sell any drugs. However, after being prodded by the U.S. Attorney, she says that she *heard* that Mr. Indiviglio was importing drugs into the United States via automobiles. Aguiar testified that McCormack says he got heroin from Indiviglio.